

## REMARKS

In the Office Action of January 12, 2006, claims 8-11 were objected to and claim 12 was rejected. In this Amendment, claims 8, 11, and 12 are currently amended. No new matter has been added.

Applicant has carefully reviewed the Office Action and respectfully request reconsideration of the claims in view of the claim amendments and remarks presented below.

### Specification

The Office requested an update to the status of the continuing data in the specification. In response, Applicant has amended the first paragraph of the specification to provide that update.

### Claim Objections

In objecting to claims 8-11, the Office asserts that claims 8 and 11 "define structure in terms of the unclaimed bed" and that the article "the" is needed before "third and fourth directional data values" in claim 8. In this Amendment, the article "the" was inserted in claim 8 where indicated by the Office. Also, the term "bed" was replaced with couch-- in the preamble and the body of claim 8 for consistency with the detailed description of the specification. No new matter is added since "couch" is included in the application as originally filed (see, for example, Publication No. 2004/0122311, paragraphs 23, 24, and 27).

The preamble of claim 8 is also currently amended to recite "with respect to a treatment device" for consistency with the application as originally filed (see, for example, the first sentence of the Abstract). As currently amended, claim 8 recites "an apparatus configured to move the couch..." (emphasis added). As such, the couch is not a part of the claimed invention, but is merely is workpiece or part of the environment of the claimed invention. Claim 11 as currently amended makes no reference to the couch. Accordingly, Applicant submits claims 8-11 do not define structure in terms of the unclaimed bed.

### Claim Rejection under 35 U.S.C. § 101

In rejecting claim 12 as being directed to non-statutory subject matter, the Office asserts that, because the marker is attached to the patient, the patient is included as part of the claimed


invention. Claim 12 is currently amended to recite that the marker is "adapted to be" attached to the patient. As such, the patient is part of the environment in which the claimed invention may operate. Accordingly, Applicant submits that claim 12 as currently amended does not include the patient as part of the claimed invention.

#### CONCLUSION

In light of the foregoing amendments and remarks, Applicant respectfully submits that claims 8-12 are in condition for allowance.

Respectfully submitted,

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